

Claims 1-20 remain pending in this application.

Reconsideration and full allowance of Claims 1-20 are respectfully requested.

I. AMENDMENTS TO SPECIFICATION AND DRAWINGS

The specification and drawings have been amended to incorporate various materials that were contained in the originally-filed specification and then deleted in a Preliminary Amendment. Accordingly, the various materials being added to the specification and drawings in this Amendment do not constitute new matter.

II. REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1, 2, 4-7, 9, 10, 12-16, and 18-20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2003/0175037 to Kimmitt et al. ("*Kimmitt*"). This rejection is respectfully traversed.

A prior art reference anticipates a claimed invention under 35 U.S.C. § 102 only if every element of the claimed invention is identically shown in that single reference, arranged as they are in the claims. (*MPEP* § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. (*MPEP* § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)).

Claims 1 and 9 have been amended to recite that an "average output power" and an "optical modulation amplitude" and/or an "extinction ratio" of a light source are controlled "based on logical

data values of the transmitted data contained in the emitted light.” Claim 15 has been amended to recite that an “average output power” and an “optical modulation amplitude” and/or an “extinction ratio” of a signal source are controlled “based on logical data values of the transmitted data contained in the emitted signal.”

The system of *Kimmitt* does not, in any way, rely upon the “logical data values” of data contained in transmitted light or other signals. Instead, the system of *Kimmitt* expressly relies upon a “very low frequency” amplitude modulation, which creates a small amplitude modulation that is detectable in an optical feedback path of the system. (*See, e.g., Par. [0030]*). In other words, *Kimmitt* superimposes a low frequency “dither signal” onto another signal in order to bias a modulator. In fact, *Kimmitt* clearly describes in paragraphs [0031] and [0032] how a “residual AM envelope” is created in an optical signal and how that envelope drives a modulator bias “back toward quadrature.” This clearly shows that *Kimmitt* is not using the “logical data values” of transmitted data to adjust an output power of a light or signal source.

Accordingly, the Applicants respectfully request withdrawal of the §102 rejection and full allowance of Claims 1, 2, 4-7, 9, 10, 12-16, and 18-20.

III. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 3, 11, and 17 under 35 U.S.C. § 103(a) as being unpatentable over *Kimmitt*. The Office Action rejects Claim 8 under 35 U.S.C. § 103(a) as being unpatentable over *Kimmitt* in view of U.S. Patent No. 7,065,303 to Kerem (“*Kerem*”). These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP* § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure. (*MPEP* § 2142).

Claims 3, 8, 11, and 17 depend from Claims 1, 9, and 15. As shown above, Claims 1, 9, and 15 are patentable. As a result, Claims 3, 8, 11, and 17 are patentable at a minimum due to their dependence from allowable base claims.

Accordingly, the Applicants respectfully request withdrawal of the § 103 rejections and full allowance of Claims 3, 8, 11, and 17.

CONCLUSION

The Applicants respectfully assert that all pending claims in this application are in condition for allowance and respectfully request full allowance of the claims.

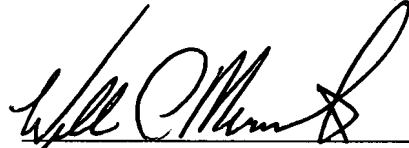
If any issues arise or if the Examiner has any suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@munckbutrus.com*.

The Commissioner is hereby authorized to charge any fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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